

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

STANDARD DETROIT PAINT COMPANY, n/k/a)
SDPC, INC., STANDARD DETROIT REALTY)
COMPANY, BRUCE M. GOOEL, and)
RIVERSIDE ORGANICS, INC.)

Defendants.)

Civil Action

04-71442

DENISE PAGE HOOD

MAGISTRATE JUDGE R. STEVEN WHALEN

U.S. DIST. COURT CLERK
EAST DIST. MICH.
DETROIT-PSG

04 APR 16 P 4:40

FILED

COMPLAINT

The United States of America, by and through the undersigned attorneys, under authority of the Attorney General of the United States and acting at the request of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), alleges that:

1. This is a civil action pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607. In this action, the United States seeks to recover from Standard Detroit Paint Company, n/k/a SDPC, Inc., Standard Detroit Realty Company, Bruce M. Gooel and Riverside Organics, Inc. ("Defendants") costs incurred by the United States in responding to releases or threatened releases of hazardous substances on property located at 8100, 8138, 8205, 8225, 8235, and 8300 Lyndon Avenue, Detroit, Michigan, together with interest thereon as provided in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). In accordance with Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States also seeks a declaratory judgment that

Defendants are liable for any additional response costs that may be incurred by the United States in connection with such properties in the future. The United States also seeks civil penalties from Defendant Standard Detroit Paint Company and Defendant Standard Detroit Realty Company pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), and the Debt Collection Improvement Act, 31 U.S.C. § 3701 *et seq.*, for their failure to comply with requirements of an administrative order issued by U.S. EPA under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). In addition, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), the United States seeks punitive damages from Defendant Standard Detroit Paint Company and Defendant Standard Detroit Realty Company in an amount up to three times the amount of all costs incurred by the Hazardous Substances Superfund as a result of the failure of Standard Detroit Paint Company and Standard Detroit Realty Company to perform removal actions required under the administrative order referred to above.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613, and 28 U.S.C. § 1391(b) and (c).

DEFENDANTS

4. Standard Detroit Realty Company is a corporation organized under the laws of the State of Michigan.

5. Standard Detroit Paint Company is a corporation organized under the laws of the State of Michigan. On information and belief, Standard Detroit Paint Company changed its name to SDPC, Inc.

6. Bruce M. Gooel is a resident of the State of Michigan. At all times relevant hereto, Bruce Gooel was the president and chief executive officer of Standard Detroit Paint Company.

7. Riverside Organics, Inc. is a corporation organized under the laws of the State of Michigan.

8. Each of the Defendants is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

GENERAL ALLEGATIONS

9. From approximately July 31, 1991 until at least January 2001, Standard Detroit Realty Company owned properties located at 8100, 8205, 8225, 8235, 8138, and 8300 Lyndon Avenue, Detroit, Michigan. The aforementioned properties owned by Standard Detroit Paint Company include at least seven buildings and various open areas between the buildings.

10. From at least 1991 until at least January of 2001, Standard Detroit Paint Company occupied facilities or portions of the facilities at 8205, 8225, 8235, 8318 and 8300 Lyndon Avenue in Detroit, Michigan (the "Site"). Standard Detroit Paint Company engaged in the manufacture of various coatings, including, paints, varnish, lacquer, and enamels, and related products. As a result of its operations at the Site, Standard Detroit Paint Company generated waste materials, including spent solvents, off-specification paint products and other materials that are hazardous wastes within the meaning of Section 3001 of the Resource Conservation and

Recovery Act, as amended, 42 U.S.C. § 6921. From at least February 23, 1995 through February 23, 2000, Standard Detroit Paint Company unlawfully stored its hazardous waste on the Site without a permit required under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*

11. During the period from approximately 1989 until at least January of 2001, Riverside Organics, Inc. occupied facilities at 8100 Lyndon Avenue and a portion of the facility at 8138 Lyndon Avenue in Detroit, Michigan. At these properties, Riverside Organics, Inc. engaged in the manufacture of pharmaceutical intermediates, and Riverside Organics, Inc. used and stored various chemicals, including benzene, toluene, and corrosive materials having a pH less than 2 and corrosive materials having a pH greater than 12.5. Riverside Organics, Inc. stored numerous lab chemicals, including flammable materials, oxidizers, corrosive materials and water reactive materials in close proximity with incompatible chemicals, and without containment areas.

12. On February 23, 2000, representatives of the U.S. EPA inspected and performed a preliminary assessment of the Site and the facility at 8100 Lyndon Avenue.

13. As of February 23, 2000, over 1500 55 gallon drums, many thousands of smaller containers, numerous steel totes and several above-ground and underground storage tanks were present in various locations around the Site, including, without limitation, in buildings at 8138, 8205, 8235 and 8300 Lyndon Avenue, outside the building at 8138 Lyndon Avenue, and along the south perimeter of 8225 and 8235 Lyndon Avenue.

14. On and after February 23, 2000, many drums and other containers on the Site were unmarked, and many drums had no seals or lids, allowing the emission of volatile

constituents from the containers. In some areas at the Site, drums were improperly stacked three pallets high. Many bulging, deteriorated and or leaking drums were found at the Site, in both indoor and outdoor areas. In outdoor areas and buildings without heat and ventilation, drums were exposed to cold temperatures.

15. Samples collected from drums and containers at the Site indicated that hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including benzene, 2-butanone (MEK), acetone, ethylbenzene, o-xylene, toluene, lead, chromium, barium, zinc and corrosive materials and ignitable materials, were present in many of the drums or containers.

16. Representatives of U.S. EPA observed deteriorated building conditions on certain properties, particularly 8138 Lyndon Avenue, that could lead to structural failure or allow drums or other containers to be exposed to precipitation.

17. During the Site assessment performed by representatives of U.S. EPA, organic chemical odors were detected in buildings at 8138 and 8300 Lyndon, and such odors persisted at the doorways and windows to the buildings. U.S. EPA representatives also detected solvent odors emanating from a stack of 200-300 drums along the fence along the southern perimeter of 8225 and 8335 Lyndon Avenue. Air monitoring documented elevated levels of VOCs at the street outside the building at 8300 Lyndon Avenue, at the sidewalk outside the building at 8138 Lyndon Avenue, and in the alley behind the 8138 and 8100 Lyndon Avenue buildings. Hazardous substances, including without limitation, toluene, benzene, acetone, 2-butanone (MEK), ethylbenzene, chloromethane, and methylene chloride were detected in air samples collected at the Site.

18. At the time of EPA's February 23, 2000 inspection, numerous laboratory chemicals, including hazardous substances, were improperly stored in close proximity with other incompatible chemicals in a laboratory area at 8100 Lyndon Avenue.

FIRST CLAIM FOR RELIEF
(CERCLA § 107(a) - Recovery of Response Costs)

19. The allegations of paragraphs 1 through 18, above, are realleged and incorporated herein by reference.

20. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part, as follows:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

- (1) the owner and operator of a . . . facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances,

* * *

from which there is a release or threatened release which causes the incurrence of response costs, of a hazardous substance shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan;

* * *

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D).

21. Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), defines the term "facility" as:

(A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

22. Each of the buildings and storage containers located at 8100, 8205, 8225, 8235, 8138, and 8300 Lyndon Avenue, Detroit, Michigan is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

23. The term "hazardous substance" is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), to include:

(A) any substance designated pursuant to section 1321(b)(2)(A) of Title 33 [section 311(b)(2)(A) of the Federal Water Pollution Control Act], (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. § 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. § 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 1317(a) of Title 33 [section 307(a) of the Federal Water Pollution Control Act], (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. § 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 2602 of Title 15 [section 7 of the Toxic Substances Control Act].

24. Each of the substances identified in paragraphs 15 and 17, above, is or contains a "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25. Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), defines the term "release," in pertinent part, as:

any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant).

26. Section 101(8) of CERCLA, 42 U.S.C. § 9601(8), defines the term "environment"

as:

(A) the navigable waters, the waters of the contiguous zone, and the ocean waters for which the natural resources are under the exclusive management authority of the United States under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C.A. § 1801 et seq.], and (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

27. There have been actual releases and threatened releases of hazardous substances, including those hazardous substances identified in paragraphs 15 and 17, above, into the environment at and from the Site, within the meaning of Sections 101(8), 101(22) and 104(a) of CERCLA, 42 U.S.C. §§ 9601(8), 9601(22), 9604(a).

28. Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), defines the term "removal"

as:

the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary [to be] taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, . . . [and] action taken under 9604(b) of this title.

In addition, pursuant to Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), the term "removal" includes enforcement activities relating to removal actions.

29. As a result of releases and threatened releases of hazardous substances at the Site, the United States has undertaken removal actions including, without limitation, monitoring, investigating and studying the nature and extent of releases or threats of release of hazardous substances into the environment; sampling the contents of drums and tanks; stabilizing site conditions and overpacking leaking drums; removing drums, tanks and other containers from the Site; securing proper disposal of the contents of drums, tanks and other containers; providing site security to limit access to the Site; and overseeing response actions undertaken by other persons and entities.

30. As of December 31 2003, the United States incurred at least \$2,764,505.50 in response costs, excluding interest, in connection with removal actions at the Site. Since December 31, 2003, the United States has continued to incur response costs in connection with the Site, including enforcement costs relating to this action.

31. The removal actions taken by the United States in connection with the Site were not inconsistent with the National Contingency Plan as promulgated pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300.

32. Standard Detroit Realty Company has been an owner of the Site since approximately July 31, 1991, when it acquired title to the property through a quit claim deed. Standard Detroit Realty Company was an owner of the Site at the time of disposal of hazardous substances there, within the meaning of Section 101(20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(a)(2), and/or is an owner of the Site within the meaning of Section 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(a)(1).

33. Standard Detroit Paint Company has operated paint manufacturing facilities at the Site since at least July, 1991. Standard Detroit Paint Company was an operator of the Site and facilities thereon at the time of disposal of hazardous substances there, within the meaning of Section 101(20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(a)(2).

34. Bruce Gooel directed and controlled the operations, including waste handling operations, of Standard Detroit Paint Company at the Site. Bruce Gooel was an operator of the Site and various facilities thereon at the time hazardous substances were disposed there, within the meaning of Section 101(20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(a)(2).

35. Riverside Organics, Inc. was an operator of portions of the Site and facilities thereon, including a portion of the facility located at 8138 Lyndon Avenue, at the time hazardous substances were disposed there, within the meaning of Sections 101(20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(a)(2).

36. The United States has satisfied any conditions precedent to undertaking response actions, to incurring response costs, and to recovering those costs under Section 107 of CERCLA, 42 U.S.C. § 9607.

37. The United States made a demand for payment of its response costs to Defendants on November 1, 2002. To date, none of the Defendants has reimbursed any of the response costs incurred by EPA in connection with the Site.

38. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants are liable to the United States for all response costs, including enforcement costs, incurred by the United States in connection with the Site, together with prejudgment interest thereon.

39. Pursuant to Section 113(g) of CERCLA, 42 U.S.C. § 9613(g), the Court should enter a declaratory judgment that Defendants will be liable for future costs incurred by the United States at the Site.

SECOND CLAIM FOR RELIEF
(CERCLA 106(b) - Civil Penalties)

40. The allegations of paragraphs 1 through 35 are realleged and incorporated herein by reference.

41. Pursuant to Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), the Debt Collection Improvement Act, 31 U.S.C. § 3701 *et seq.*, and 40 C.F.R. § 19.4, any person who, without sufficient cause, willfully violates or fails or refuses to comply with, any order of the President under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), may, in an action brought in the appropriate United States district court to enforce such order, be subject to civil penalties of not more than \$27,500 per day for each violation of such an order between January 10, 1997 and March 15, 2004.

42. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides that when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, the President may, after notice to the affected State, issue such orders as may be necessary to protect public health and welfare and the environment.

43. The President's authorities under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), have been delegated, in pertinent part, to the Administrator of U.S. EPA, and further

delegated to the Directors of the Superfund Divisions of the respective regional offices of U.S. EPA.

44. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the Director of the Superfund Division of U.S. EPA Region 5 determined that the actual or threatened release of hazardous substances from the Standard Paint Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

45. After providing notice to the State of Michigan, the Director of the Superfund Division of U.S. EPA Region 5 issued an administrative order, EPA Docket No. V-W-'00-C-588 (the "Order"), to various parties, including Defendants Standard Detroit Realty Company and Standard Detroit Paint Company, on or about April 6, 2000, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). The Order directed Standard Detroit Realty Company, Standard Detroit Paint Company and others to perform specified removal activities that the Superfund Division Director determined are necessary to protect public health, welfare or the environment, including, without limitation, establishing and maintaining site security; securing and containing all hazardous substances on Site; monitoring, sampling and other activities to identify, inventory and characterize hazardous substances on Site; stabilizing and disposing of all hazardous substances at an off-Site disposal facility. A true and accurate copy of the Order is attached hereto as Exhibit A and incorporated herein by reference.

46. Among other things, the Order required Standard Detroit Realty Company and Standard Detroit Paint Company to submit to U.S. EPA for approval a Work Plan describing and providing an expeditious schedule for implementing activities required under the Order. The Order also required Standard Detroit Realty Company and Standard Detroit Paint Company to

implement the Work Plan as approved by U.S. EPA, in accordance with the schedule approved by U.S. EPA.

47. On or about May 2, 2000, U.S. EPA approved a Work Plan and schedule that had been submitted on behalf of Standard Detroit Realty Company and Standard Detroit Paint Company pursuant to the Order. U.S. EPA subsequently approved certain modifications to the Work Plan not relevant here. The schedule in the approved Work Plan provided for completing removal activities at the Site and demobilization of contractors by July 19, 2000.

48. The Order required Standard Detroit Realty Company and Standard Detroit Paint Company to develop and implement a Health and Safety Plan that complies with applicable Occupational Safety and Health Administration regulations at 29 C.F.R. Part 19 and ensures protection of public health and safety during the on-site work required under the Order.

49. The Order required Standard Detroit Realty Company and Standard Detroit Paint Company to submit weekly progress reports to U.S. EPA providing specified information concerning implementation of the activities required under the Order.

50. Without sufficient cause, Standard Detroit Realty Company and Standard Detroit Paint Company failed to comply with the Order in numerous respects, including, without limitation:

- a. failure to provide U.S. EPA, by the deadlines specified in paragraph 2 of the Order, a complete list identifying and describing the qualifications of all of contractors and subcontractors retained to implement the removal actions required under the Order;

- b. failure to implement the Health and Safety Plan in various respects, including but not limited to failure to provide non-sparking tools for opening unknown drums and failure to use a respirator in an area where such protection was required;
- c. failure to complete removal activities – including the characterization and off-Site disposal of all hazardous substances at the Site – by the July 19, 2000 deadline specified in the approved Work Plan schedule;
- d. failure to maintain site security as required under paragraph 3.a of the Order; and
- e. failure to submit weekly progress reports as required by paragraph 3.4 of the Order.

51. Pursuant to Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), the Debt Collection Improvement Act, 31 U.S.C. § 3701 *et seq.*, and 40 C.F.R. § 19.4, Standard Detroit Realty Company and Standard Detroit Paint Company are each liable for civil penalties of up to \$27,500 per day for each violation of the Order.

THIRD CLAIM FOR RELIEF
(CERCLA § 107(c)(3) - Punitive Damages)

52. The allegations of paragraphs 1 through 35 and 41 through 50 are realleged and incorporated herein by reference.

53. Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3) provides, in pertinent part:

If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 9604 or 9606 of this title, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action.

54. Standard Detroit Realty Company and Standard Detroit Paint Company are both persons liable for the releases and threatened releases referred to above at the Site.

55. Standard Detroit Realty Company and Standard Detroit Paint Company failed, without sufficient cause to properly provide removal actions at the Site following issuance of the Order.

56. As a result of the failure of Standard Detroit Realty Company and Standard Detroit Paint Company to comply with the Order, U.S. EPA notified these Defendants on September 28, 2000 that U.S. EPA was immediately taking over the response actions at the Site.

57. As a result of the failure of Standard Detroit Realty Company and Standard Detroit Paint Company to comply with the Order, the Hazardous Substances Superfund incurred response costs of at least \$2,456,409.08 to complete implementation of removal actions described in the Order.

58. Pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), Defendants Standard Detroit Realty Company and Standard Detroit Paint Company are liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Hazardous Substance Response Trust Fund as a result of their failure to provide removal actions in accordance with the Order.

COMPANION CASE

This action is a possible companion to criminal case no. 03-CR-80770, United States v. Bruce M. Goebel, et al. (Honorable Paul Borman). It is probable that substantially similar evidence will be offered at trial, that the same or related parties will be present, and that the cases arise out of the same or similar occurrences or transactions.

PRAYER FOR RELIEF

WHEREFORE, the United States requests that this Court:

1. Enter judgment against the Defendants for all unreimbursed response costs, including enforcement costs, incurred by the United States in connection with the Site, and prejudgment interest thereon;
2. Enter declaratory judgment that Defendants shall be liable for all future costs incurred by the United States at the Site;
3. Enter judgment against Defendants Standard Detroit Realty Company and Standard Detroit Paint Company for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs, including the costs and disbursements of this action, incurred by the Hazardous Substance Response Trust Fund as a result of their failure to provide removal action in accordance with the Order issued by U.S. EPA on or about April 6, 2000;
4. Enter judgment against the Defendants Standard Detroit Realty Company and Standard Detroit Paint Company for civil penalties of not more than \$27,500 per day for each day of each individual Defendant's failure to comply with the Order issued by U.S. EPA on or about April 6, 2000;
5. Award the United States its costs of this action; and
6. Grant such other and further relief as is appropriate.

Respectfully submitted,

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EXHIBIT A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 5

IN THE MATTER OF:

Standard Paint Company Site

Respondents:

Standard Detroit Paint Company)

Standard Detroit Realty Company)

Riverside Organics, Inc.)

Robert C. Gillmann)

Docket No.

V-W-00-C-588

ADMINISTRATIVE ORDER
PURSUANT TO SECTION 106(a)
OF THE COMPREHENSIVE
ENVIRONMENTAL RESPONSE,
COMPENSATION, AND
LIABILITY ACT OF 1980,
AS AMENDED, 42 U.S.C.
§9606(a)

I. JURISDICTION AND GENERAL PROVISIONS

This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9606(a), and delegated to the Administrator of the United States Environmental Protection Agency ("U.S. EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A and 14-14-B, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A and 14-14-B.

This Order pertains to property located at 8205, 8225, 8235, 8132, and 8300 Lyndon Avenue, Detroit, Michigan (the "Standard Paint Site" or the "Site"). This Order requires the Respondents to conduct removal activities described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

U.S. EPA has notified the State of Michigan of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

II. PARTIES BOUND

This Order applies to and is binding upon Respondents and the Respondents' heirs, receivers, trustees, successors, and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Order. Compliance or noncompliance

by one or more Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

Respondents shall ensure that their contractors, subcontractors, and representatives comply with this Order. Respondents shall be responsible for any noncompliance.

III. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

1. Respondent Standard Detroit Realty Company owns the property and buildings located at 8205, 8225, 8235, 8100, 8138 and 8300 Lyndon Avenue, Detroit, Michigan.
2. Respondent Standard Detroit Paint Company has manufactured paints and coatings at the Site. Standard Detroit Paint Company also uses the Site to house paint wastes, solvents, acids, corrosives, and other materials in drums.
3. From approximately July 26, 1988, to July 15, 1996, Respondent Riverside Organics, Inc. operated a chemical production business at 8100 Lyndon Avenue, Detroit, Michigan. On July 15, 1996, Riverside Organics, Inc. was automatically dissolved pursuant to Section 831 of the Michigan Business Corporation Act for failing to file an annual report.
4. From approximately July 15, 1996 to the present, Respondent Robert C. Gillmann d/b/a Riverside Organics, a sole proprietorship, has continued operation of the chemical production business located at 8100 Lyndon Avenue Detroit, Michigan. Respondent leases 8100 Lyndon Avenue on an oral month-to-month tenancy, from Standard Detroit Realty Company, the owner of the property.
5. Respondents Riverside Organics, Inc. and Robert C. Gillmann, d/b/a Riverside Organics manufactured intermediate chemicals for the pharmaceutical industry. Drums of wastes generated in the course of these manufacturing operations are located within and outside of the building at 8138 Lyndon Avenue on the Site.
6. The Site is bordered on the north by a residential area. Railroad tracks, a fence, and a small wooded area lie south of the Site. Other industrial facilities border the Site on its east and west sides.

7. U.S. EPA conducted an initial site assessment at the Site beginning on February 23, 2000. The site assessment revealed the conditions described below.
8. The Site includes seven buildings located on the north and south sides of Lyndon Avenue and open spaces between the buildings. Five of these buildings are located on the south side of Lyndon. These buildings house a storefront, and provide storage for finished paint product, off-specification paint, and product ingredients.
9. The building on the north side of Lyndon Avenue at 8300 Lyndon contains approximately 600-1,000 drums of paint, solvent, and resin waste. Many of these drums are unmarked, and are stacked up to three pallets high. Containers with old, possibly crystallized, hydrogen peroxide are present in the building and pose a threat of fire and/or explosion if disturbed.
10. The building on the north side of Lyndon Avenue at 8138 Lyndon Avenue has deteriorated and is unsecured. The building is not heated or ventilated, and has water leaking into it from its damaged roof and broken sprinkler system.
11. The 8138 Lyndon Avenue building is divided into two parts. The western portion of the building contains drums of paint-related wastes and other chemicals including sodium and potassium cyanide and benzene. Most of these drums of waste were generated by Respondent Standard Detroit Paint Company, although some of these drums of waste were generated by Respondents Riverside Organics, Inc. and Robert C. Gillmann. This portion of the site contains 1,000-1,500 drums and thousands of smaller (1-gallon and 5-gallon) containers. Many waste spills are evident in the building.
12. Numerous drums of waste generated by Respondents Standard Detroit Paint Company, Riverside Organics, Inc. and Robert C. Gillmann are also located outside the buildings. These exterior drums are improperly stacked and badly deteriorated. Large above-ground tanks are present at the Site, and representatives of Standard Detroit Paint Company confirmed that underground tanks are present as well.
13. Many of the drums at the Site (both inside and outside the buildings) have deteriorated, and are leaking. Many of the drums do not have seals or lids, so that volatile organic compounds ("VOCs") escape from those drums.

14. Strong solvent odors emanate from the buildings as well as from a stack of 200-300 drums along the fence to the south of the buildings on the south side of Lyndon Avenue. Air monitoring documented elevated levels of VOCs at the street outside the 8300 Lyndon Avenue, at the sidewalk outside the 8138 Lyndon Avenue building, and in the alley behind the 8138 and 8100 Lyndon Avenue buildings.
15. At the time of the site assessment, the buildings containing the drummed wastes and laboratory chemicals were unsecured.
16. On February 23, 2000, U.S. EPA issued verbal notice to the Respondent Standard Detroit Paint Company, requiring Standard Detroit Paint Company to address the release or threat of release of hazardous substances, pollutants and contaminants at the Site. On April 3, 2000, U.S. EPA issued verbal notice to Respondents Riverside Organics, Inc. and Robert C. Gillmann, requiring them to address the release or threat of release of hazardous substances, pollutants and contaminants at the Site.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, U.S. EPA determines that:

1. The Standard Paint Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
2. Waste paint, solvents, corrosive materials, ignitable materials, cyanide, hydrogen peroxide, and VOCs are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
3. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).
4. Respondent Standard Detroit Realty Company is the present "owner" of the Standard Paint Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. §9601(20). Respondent Standard Detroit Paint Company is the present "operator" of the Standard Paint Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. §9601(20). Respondents Standard Detroit Paint Company, Riverside Organics, Inc. and Robert C. Gillmann are persons who at the time of disposal of any hazardous substances operated the Standard Paint Site, or who arranged for disposal or transport for

disposal of hazardous substances at the Standard Paint Site. Each Respondent is therefore a liable person under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).

5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§9601(8) and (22).

6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR Part 300. These factors include, but are not limited to, the following:

a. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants; this factor is present at the Site due to the existence of uncontrolled ignitable wastes and solvents posing a threat of fire or explosion and due to open and leaking drums posing a threat of release of VOCs to the neighboring residential area.

b. Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release; this factor is present at the Site because thousands of unsecured drums of waste paints, solvents, cyanide, corrosives, and ignitable materials are located at the Site, and many of the drums have deteriorated and are leaking. Many more drums are exposed to water, cold, and physical stress caused by improper stacking. These drums may release their contents at any time. Deteriorated building conditions result in increased potential for structural failures, such as roof collapse, which could, in turn, lead to container failure and further hazardous substance releases. In addition, above-ground and underground storage tanks of unknown contents and condition are present at the Site.

c. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate; this factor is present at the Site due to leaking from drums located outdoors along the south perimeter of the 8225-8235 Lyndon Avenue address. These drums are improperly stacked and badly deteriorated. Several, at a minimum, have been leaking into soils beneath them. This spilled material may migrate into deeper soils and/or overland.

d. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; this factor is present because the deteriorated conditions of the 8138 Lyndon Avenue building allow rainwater into the building during storm events. This leads to mixing of the rainwater with spilled material from leaking drums within the building, creating more volume of contaminated material to potentially drain to sewer outlets within the building. Additionally, the absence of heat and air conditioning within all the structures and outside the facility results in the waste drums being subjected to freeze/thaw and extreme heat conditions. These conditions are generally known to promote and accelerate degradation of container (drum) integrity, which can then result in additional hazardous substance release.

e. Threat of fire or explosion; this factor is present at the Site due to the existence of uncontrolled, unsecured, and leaking ignitable wastes and solvents, some of which are located in deteriorating drums and buildings. The threat is exacerbated by the unsecured nature of the Site buildings. Introduction of an ignition source could ignite vapors or spilled liquids from the VOC drums in the buildings. Ignition could result in a catastrophic fire event and expose nearby residents to VOC emissions, toxic combustion byproducts, and drum explosions. The presence of old, possibly crystallized, hydrogen peroxide oxidizers is also of great concern. Mishandling or vandalism of such materials could cause explosions and fire to spread to the adjacent ignitable and combustible hazardous wastes.

7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP and CERCLA.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, U.S. EPA hereby orders that Respondents perform the following actions:

1. Notice of Intent to Comply

Respondents shall notify U.S. EPA in writing within 2 business

days after the effective date of this Order of Respondents' irrevocable intent to comply with this Order. Failure of a Respondent to provide such notification within this time period shall be a violation of this Order.

2. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondents shall perform the removal actions themselves or retain a contractor or contractors to implement the removal actions. Respondents shall notify U.S. EPA of Respondents' qualifications or the name and qualifications of such contractor(s), whichever is applicable, within 3 business days of the effective date of this Order. Respondents shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 3 business days prior to commencement of such work. U.S. EPA retains the right to disapprove of the Respondents or any of the contractors and/or subcontractors retained by the Respondents. If U.S. EPA disapproves a selected contractor, Respondents shall retain a different contractor within 2 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval.

Within 2 business days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order and submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If U.S. EPA disapproves a selected Project Coordinator, Respondents shall retain a different Project Coordinator within 3 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 4 business days of U.S. EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by Respondents.

The U.S. EPA has designated Ralph Dollhopf of the Emergency Response Branch, Region 5, as its On-Scene Coordinator ("OSC"). Respondents shall direct all submissions required by this Order to the OSC at 9311 Groh Road, Grosse Ile, Michigan, 48138-1697, by certified or express mail. Respondents shall also send a copy of all submissions to Thomas Krueger, Associate Regional

Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590. Respondents and their contractors are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant postconsumer waste paper content where possible) and using two-sided copies.

3. Work to Be Performed

Respondents shall perform, at a minimum, the following response activities:

- a. Establish and maintain site security;
- b. Secure and contain all hazardous substances on site;
- c. Conduct monitoring and sampling and any other necessary activities to identify, inventory, and characterize hazardous substances on site, including but not limited to, laboratory chemicals, ignitable wastes, and corrosives;
- d. Stabilize and appropriately dispose of all hazardous substances at an off-site facility;
- e. Characterize and excavate contaminated soil and transport off site for appropriate disposal; and
- f. Take any response action to address any release or threatened release of a hazardous substance, pollutant or contaminant that the U.S. EPA determines may pose an imminent and substantial endangerment to the public health or the environment.

3.1 Work Plan and Implementation

Within 3 business days after the effective date of this Order, the Respondents shall submit to U.S. EPA for approval a draft Work Plan for performing the removal activities set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the activities required by this Order.

U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If U.S. EPA requires revisions, Respondents shall submit a revised draft Work Plan within 4 business days of notification. Respondents shall implement the Work Plan as finally approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent

modifications shall be fully enforceable under this Order. Respondents shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved Work Plan.

Respondents shall not commence or undertake any removal actions at the Site without prior U.S. EPA approval.

3.2 Health and Safety Plan

Within 3 business days after the effective date of this Order, the Respondents shall submit a plan for U.S. EPA review and comment that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910. If U.S. EPA determines it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the pendency of the removal action.

3.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance. Upon request by U.S. EPA, Respondents shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondents shall provide to U.S. EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondents shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA, Respondents shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents or their contractors or agents while performing work under this Order. Respondents shall notify U.S. EPA not less than 2 business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

3.4 Reporting

Respondents shall submit a weekly written progress report to U.S. EPA concerning activities undertaken pursuant to this Order, beginning immediately upon U.S. EPA's approval of the Work Plan, until termination of this Order, unless otherwise directed by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Any Respondent that owns any portion of the Site, and any successor in title, shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to U.S. EPA and the State. The notice to U.S. EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.4 (Access to Property and Information).

3.5 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, the Respondents shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation

of this report, the information submitted is true, accurate, and complete.

4. Access to Property and Information

Respondents shall provide or obtain access as necessary to the Site and all appropriate off-site areas, and shall provide access to all records and documentation related to the conditions at the Site and the activities conducted pursuant to this Order. Such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State of Michigan representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct activities which U.S. EPA determines to be necessary. Respondents shall submit to U.S. EPA, upon request, the results of all sampling or tests and all other data generated by Respondents or their contractor(s), or on the Respondents' behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondents shall immediately notify U.S. EPA if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. U.S. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as U.S. EPA deems appropriate.

5. Record Retention, Documentation, Availability of Information

Respondents shall preserve all documents and information, in their possession or the possession of their contractors, subcontractors or representatives, relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for 6 years following completion of the removal actions required by this Order. At the end of this 6-year period and at least 60 days before any document or information is destroyed, Respondents shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the 6-year period at the written request of U.S. EPA. Any information that Respondents are required to provide or maintain

pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501 et seq.

6. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by U.S. EPA, with the U.S. EPA Off-Site Rule, 40 CFR §300.440, 58 Fed. Reg. 49215 (Sept. 22, 1993).

7. Compliance With Other Laws

All actions required pursuant to this Order shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA and 40 CFR §300.415(j). In accordance with 40 CFR §300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

8. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release, or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions.

Respondents shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondents shall also comply with any other notification requirements, including those in Section 103 of CERCLA, 42 U.S.C. §9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §11004.

VI. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or Respondents at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

U.S. EPA and Respondents shall have the right to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Respondents, and Respondents shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. Notification may initially be made orally, but shall be followed promptly by written notice.

VII. PENALTIES FOR NONCOMPLIANCE

Violation of any provision of this Order may subject Respondents to civil penalties of up to \$27,500 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1). Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3). Should Respondents violate this Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. §9606.

VIII. REIMBURSEMENT OF COSTS

Respondents shall reimburse U.S. EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order. U.S. EPA may submit to Respondents on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. U.S. EPA's Itemized Cost Summary, or such other summary as certified by U.S. EPA, shall serve as the basis for payment.

Respondents shall, within 30 days of receipt of the bill, remit a cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Program Accounting & Analysis Section
P.O. Box 70753
Chicago, Illinois 60673

Respondents shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Standard Paint Site" and shall reference the payer's name and address, the U.S. EPA site identification number (#BJ57), and the docket number of this Order.

Interest at a rate established by the Department of the Treasury pursuant to 31 U.S.C. §3717 and 4 CFR §102.13 shall begin to accrue on the unpaid balance from the day after the expiration of the 30 day period notwithstanding any dispute or an objection to any portion of the costs.

IX. RESERVATION OF RIGHTS

Nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

X. OTHER CLAIMS

By issuance of this Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or U.S. EPA shall not be a party or be held out as a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Order.

This Order does not constitute a pre-authorization of funds under

Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2).

Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§9606(a), 9607(a).

XI. MODIFICATIONS

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any other portion of the Order, may only be modified in writing by signature of the Director, Superfund Division, Region 5.

If Respondents seek permission to deviate from any approved plan or schedule, Respondents' Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve Respondents of their obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XII. NOTICE OF COMPLETION

After submission of the Final Report, Respondents may request that U.S. EPA provide a Notice of Completion of the work required by this Order. If U.S. EPA determines, after U.S. EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention), U.S. EPA will provide written notice to the Respondents. If U.S. EPA determines that any removal activities have not been completed in accordance with this Order, U.S. EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the

U.S. EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

XIII. ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting these removal actions is available for review during normal business hours in the U.S. EPA Record Center, Region 5, 77 W. Jackson Blvd., Seventh Floor, Chicago, Illinois. Respondents may contact Thomas Krueger, Associate Regional Counsel, at (312) 886-0562 to arrange to review the Administrative Record. An index of the Administrative Record is attached to this Order.

XIV. OPPORTUNITY TO CONFER

Within 2 business days after issuance of this Order, Respondents may request a conference with U.S. EPA. Any such conference shall be held within 2 business days from the date of the request, unless extended by agreement of the parties. At any conference held pursuant to the request, Respondents may appear in person or be represented by an attorney or other representative.

If a conference is held, Respondents may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondents may submit any information, arguments or comments (including justifications for any assertions that the Order should be withdrawn against a Respondent), in writing to U.S. EPA within 2 business days following the conference, or within 3 business days of issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Requests for a conference shall be directed to Thomas Krueger, Associate Regional Counsel, at (312) 886-0562. Written submittals shall be directed as specified in Section V.2 of this Order.

XV. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that a Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XVI. EFFECTIVE DATE

This Order shall be effective 2 business days following issuance unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective 3 business days after the day of the conference.

IT IS SO ORDERED

BY: _____
William E. Munro, Director
Superfund Division
United States
Environmental Protection Agency
Region 5

DATE: 4/6/2000